IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Writ Petition No.771 of 2001

Municipal Corporation of
Greater Bombay ..Petitioner

vs.

General Secretary,
BEST Workers Union ..Respondent

Mr.Sudhir Talsania i/b M/s M.V.Kini and Co. for petitioner.

Mr.C.U.Singh, Sr.Counsel with Mr.M.D.Nasgale for respondent.

CORAM: S.C.DHARMADHIKARI J.
8th July 2008

P.C.

1. The petitioner Municipal Corporation of Greater Mumbai through the General Manager, BEST has filed this writ petition invoking this Court's writ jurisdiction under Article 226 of the Constitution of India praying that the order dated 23rd October, 2007 (Annexure K) be quashed and set aside. Respondent before me is the General Secretary, BEST Workers Union. The Union is the original complainant. It filed the complaint (ULP) No.413 of 2007 alleging unfair labour practice under items 5 and 9 of Schedule IV of the M.R.T.U. and P.U.L.P.Act, 1971. Unfair labour practices that are allegedly committed are set out in the complaint. The complaint is pending.

2. It is stated that there is an agreement between the Union and the BEST for a period of five years. Initially the agreement was for a period of five years commencing from 1st April, 1996. Thereafter the charter of demands were served on the Undertaking. By an agreement dated 7th June, 2002 between the Undertaking and the Union, the matter of revision of pay scales etc. was referred to 3 Members Committee. 3 Members Committee forwarded its recommendations on the issue but they were not accepted by the Union. Thereafter there was an agreement to refer all the disputes to Arbitrator who gave his Award on 30th November, 2005. After due deliberations, settlement was arrived at, a copy of which is annexed as Annexure A to the complaint. There was further agreement reached on 6th June, 2006 and a copy of which is annexed as Annexure B. The total financial burden on the Undertaking would be Rs.402 crores. After setting out the features of the agreement and relying upon certain clauses therein, it is urged by the Union that there have been certain errors and mistakes in computation and disbursement of the amounts which are pertaining to the matters enlisted in the complaint and more particularly in paragraphs 3(h) to (j). It is urged that a new scheme was to be introduced through the Insurance Company for coverage of Accidental, natural

death and injuries of the employees and thereafter coverage of Rs. 2 lacs per employee. After relying upon these clauses in the settlement, it is contended that the Undertaking deliberately failed and neglected to implement the terms of the settlement and there is a reference to the correspondence on the issue. Thereafter, it is alleged that the Undertaking addressed a letter after disbursement of Rs.335 crores that there is recovery in respect of many employees in the transport undertaking and company's administrative departments on account of allegedly excess amount paid. The Union pointed out that the difference has not been paid and, therefore, there is no question of any wrong calculations of the arrears and mistakes. If that were to be the case, then, how the Undertaking would disburse the sum of Rs.335 crores when there were mistakes is not clear at all.

3. It is in such circumstances that the Undertaking has not abided by the settlement and agreement with regard to payment of arrears on account of Incentive Bonus, Leave travel assistance and wages against privilege leave and casual leave. Further, the settlement has not been implemented with regard to implementation of the medical insurance scheme and increase in Medical Allowance to the workers designated as "A" and "B" grade officers.

Elaborating all these aspects the complaint has been filed and the prayers therein are that all arrears out of this settlement with regard to above allowances be paid within such time as stipulated by the Court below. Thereafter certain other directions are sought with regard to Medical Insurance Scheme.

4. It is it this complaint that the interim application was filed and interim relief was sought that no recovery be made so also the Undertaking be directed to fully abide by the settlement and make payment of all arrears.

5. The application was supported by the affidavit of Secretary Mr.U.K.Ambonkar.

6. Initially there was an ad-interim order made on 28th September, 2007 restraining recovery of any alleged excess payment from the salaries of the month stipulated in the ad-interim order.

7. Thereafter a reply was filed by the Undertaking. While not disputing the settlement, it was urged on behalf of the Undertaking that the settlement and agreement are being fully abided by and implemented. The Undertaking has made a payment of Rs.335 crores till date. It is

thereafter stated that some of the employees were paid excess amount. Further, there were ad hoc payments made from time to time. Therefore, there was necessity of recovery and adjustment. It is in such circumstances that the letter was addressed and it is not as if the Undertaking does not desire to abide by the settlement or implement the same. All allegations of unfair labour practice have been denied. The Undertaking placed its interpretation as far as clauses 12 and 19 are concerned. It urges that there is no case made out for grant of any interim relief.

8. The Tribunal after hearing both sides has proceeded to make an interim order in the following terms.

> "1. The application Exh.U-2 is partly allowed.
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> 2. The respondent is directed to call for the objections of the employees by pasting a notice on notice board in respect of excess amount, if any, paid to them by way of arrears arising out of the settlement dated 6th June, 2006 and 22nd April, 2006 and respondent to call such objections by 15th November, 2007 and thereafter the respondent to decide within one month that whether there is any

substance in the objections of the employees or not, and if according to the respondent, the excess amount is paid to the employees, the respondent is at liberty to proceed to recover the amount, and if according to the respondent, there is no any excess amount paid to the employees and if it is already recovered, the respondent to refund the same in one installment to the concerned employees.

3. The respondent is further directed to implement clauses 12 and 19 of the agreement dated 6-6-2006 on or before 31-12-2007 by mutual consent as agreed in settlement dated 6.6.2006.

4. I further direct the respondent that if it fails to implement clause 12 and 19 of the agreement dated 6.6.2006, the respondent shall not recover a single Pai from the salary/wages of the employees from December, 2007 paid in January, 2008.

5. Case to proceed further."

9. Aggrieved by this order the Undertaking has approached this Court. Thereafter, it appears that an application

was made for extension of time and which application has been allowed by the Industrial Court. The time was extended as prayed by the Undertaking.

10. I have heard Mr.Talsania, learned Senior Counsel for the petitioner and Mr.Singh, learned Senior Counsel for the respondent - Union. With their able assistance I have perused the complaint and the interim relief application so also the affidavit of the Undertaking filed before the Court below. I have also perused the impugned order.

11. It is apparent to me that as far as the payment which is contemplated under the settlement is concerned, there is not much dispute. The Undertaking admitted to have paid a sum of Rs.335 crores till date and which figure is not disputed by the Union also. Balance sum of Rs.67 crores remains to be disbursed. The Court below was, therefore, right in issuing a prima facie direction that as far as these amounts are concerned, they should be paid. However, with regard to framing of medical insurance scheme and making it applicable, Mr.Talsania submits that at this stage it would not be possible for the Undertaking to incur any additional burden. Even the scheme suggested before this Court by the Union would entail in the Union being required to spend further Rs.100

crores is his submission. The scheme that is contemplated by clause 12 has not been implemented. However, he submits that whether the relief that is claimed on the basis of clause 12 can be granted at this stage, is something which this Court must go into and to that extent the interim order requires interference. His grievance is that virtually final orders are passed at the interlocutory stage.

12. On the other hand, Mr.Singh submits that the Undertaking has not implemented clauses 12 and 19 of the settlement. There is a prima facie case made out of unfair labour practice and, therefore, directions as issued need not be interfered with.

13. In my view, as far as the order of the Industrial Court is concerned, that partly allows the application for interim relief. Clause 2 of the operative part of the order talks of recovery of the excess amount and further directs that if there is no excess amount paid but it is erroneously recovered, then, refund be made in one instalment.

14. It is apparent to me that such a relief would require going into the details of the recovery which is allegedly

in excess and wrongful. It is not as if this is something which can be straightway inferred. Although the Union has alleged that legitimate claims have not been honoured, yet, it cannot be presumed straightway without any evidence being led by the parties that the recoveries are allegedly in excess and, therefore, refund should be made. As far as clause 19 of the settlement is concerned, my attention is invited to the same and it is stated in the said clause that on implementation of the revised pay scale and Dearness Allowances with effect from 1st April, 2001 the cases of payment made on account of over time etc. will not be reopened except incentive bonus linked with basic pay. Industrial Court, therefore, has required to go into such cases of reopening by the Undertaking and only then a conclusive finding can be rendered. Be that as it may, Mr.Talsania, on instructions, makes a statement that the Undertaking is not ready at this stage to straightway implement the Medical Insurance Scheme as suggested by the Union. It may consider the same at later stage. While not disputing that some representation/draft is forwarded to the Undertaking but according to Mr.Talsania, the Undertaking is not contemplating at this stage implementation of the Accidental Insurance Scheme.

15. In my view,s the stand of the Undertaking being

placed on record so also the statement, reiterated before me, on instructions, whether the clauses with regard to accidental insurance scheme (clause (12) is breached or settlement as a whole itself is not implemented is something which must be gone into at the stage of trial. It is not possible to infer at this stage that the Undertaking has refused to abide by the settlement. In such circumstances and when observations of the Industrial Court themselves disclose that there is no unfair labour practice as far as employer's decision to deduct and/or adjust excess recovery, then, it is not necessary for the Tribunal to have directed the Undertaking to implement clause No. 12.

16. However, as far as the payment under the settlement/agreement are concerned, in my view, the Union is not disputing that Rs.335 crores have already been disbursed. It would not be fair, just and proper for the employee that the balance sum is allowed to be retained by the Undertaking. If it is agreed by the Undertaking, prima facie, that balance sums are also payable, then, interest of justice would be subserved if the balance sums under clause no.19 of the subject Settlement are directed to be paid. In such circumstances, in my view, it would be fair, just and proper to direct the Undertaking to

release these balance sums within a period of 3 months from today.

17. In the light of the above, in my view, the order of the Industrial Court requires modification. Unless and until it is concluded that there is unfair labour practice under the relevant items so also the Undertaking has violated the settlement it was not proper to have issued the directions as are issued in clauses 3 and 4 of the interim order. However, if recovery of any excess sum is contemplated and the same is carried out, that would be subject to final order in the complaint.

18. Similarly, the disbursement and release of the balance sum as directed above would also abide by the final order in the complaint. It is made clear that because the interim order is modified by this Court it does not mean that this Court has expressed any opinion on the merits of the controversy. All pleas of both sides in that behalf are expressly kept open. It is only that this Court was of the opinion that some of the directions could not have been issued at the interlocutory stage, that it interfered in writ petition. The interim order, therefore, stands modified and substituted as above. Petition is disposed of. Industrial Court to endeavour

and dispose of the complaint within a period of six months from today.

19. It is clarified that when this Court has directed release and disbursement of the balance sum it is understood that the balance sum and release is of incentive linked basic pay covered by clause 19 of the settlement and if such amounts are not disbursed till date as contemplated by the said clause, then, Undertaking to release the same within the period directed above.

(S.C.DHARMADHIKARI J.)